REMARKS

The present amendment cancels claims 12, 35, and 40-42 without prejudice or disclaimer as to the subject matter recited therein. In addition, claims 1, 18, 26, 28, 33, 36, and 37 have been amended. Therefore, claims 1-10, 13-22, 24-33, and 36-39 remain pending in the captioned case. Further examination and reconsideration of the presently claimed application are respectfully requested.

Section 102 Rejection

Claims 1-7, 14, 15, 18-32, 37, and 38 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,549,937 to Auerbach et al. (hereinafter "Auerbach"). The standard for "anticipation" is one of fairly strict identity. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP 2131. Furthermore, anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, as arranged in the claim. *W.L. Gore & Assocs. V. Garlock*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983). Using these standards, Applicants submit the cited art fails to disclose each and every element of the currently pending claims, some distinctive features of which are set forth in more detail below.

Auerbach does not teach or suggest the presently claimed steps of (i) selecting two or more communications applications to be used for transmission of the message, (ii) dividing the message into separate portions, and (iii) sending each separate portion of the message using a different one of the selected communications applications, such that the entirety of the message is sent. Amended independent claim 1 recites in part:

> A method of sending a message by computer-based communication, said method comprising ... selecting two or more communications applications to be used for transmission of the message, wherein the two or more communications applications are selected from a group comprising email, instant messaging, message boards, Internet chat, IP telephone and video conferencing applications; dividing the message into separate portions appropriate for sending by the respective selected communications applications; and sending each separate portion of the message using a different one of the selected communications applications, such that the entirety of the message is sent.

Independent claim 26 (a computer-usable carrier medium) recites similar limitations. Support for the amendments to claims 1 and 26 may be found in claims 12 and 35, as well as in the present specification, e.g., on page 2, lines 6-15; page 6, line 27 to page 7, line 11; page 15, lines 5-25; page 22, lines 1-8; and page 26, line 21 to page 27, line 10.

Auerbach discloses a system and method for multi-protocol communication in a computer network (Auerbach, Title). More specifically, Auerbach provides a conversion platform that allows a client application to communicate with multiple service providers by converting outgoing messages into the unique format and protocol used by the different service providers (*see*, e.g., Auerbach, column 4, lines 51-58; and column 7, lines 1-17). For example, Auerbach states that "[w]hen the user transmits the message... conversion platform 112 routes the outgoing message to the SP1 protocol services module 130. The SPI protocol services module 130 converts the outgoing message to the appropriate format and adds any other protocol requirements, such as headers, recipient identification data, and the like... Following conversion of the message to the appropriate format, the SP1 protocol services module 130 transmits the message to the SP1 server 106." (*See*, Auerbach, column 8, lines 1-18). In one embodiment, the invention of Auerbach enables a user, who is a subscriber of an instant messaging service with a first service provider, to send instant messages to users who do not subscribe to the same instant messaging service or service provider. (*See*, Auerbach, column 8, lines 39-53).

The teachings of Auerbach, which involve converting messages into a particular format and protocol used by different service providers, has nothing to do with the presently claimed case. For example, the presently claimed case teaches a method for sending a message, where the method includes "selecting two or more communications applications to be used for transmission of the message." In some cases, the two or more "communications applications" may be selected from a group comprising email, instant messaging, message boards, internet chat, IP telephone and video conferencing applications. Though Auerbach briefly mentions the use of email and instant messaging, Auerbach does not teach or suggest that two or more communications applications can be used for transmitting a single message. For example, Auerbach fails to suggest that email AND instant messaging applications may each be selected for transmitting a single message.

In addition, Auerbach fails to disclose the presently claimed method step of "dividing the message into separate portions appropriate for sending by the respective selected communications applications." In fact, statements in the Office Action admit that "Auerbach does not explicitly state [the presently claimed limitation of] ... dividing the message into separate portions appropriate for

sending by the respective selected communications applications, prior to sending." (Office Action, page 9).

Furthermore, no teaching or suggestion can be found within Auerbach for "sending each separate portion of the message using a different one of the selected communications applications, such that the entirety of the message is sent," as recited in present claims 1 and 26. In fact, Auerbach explicitly states that once the message is converted into the appropriate format, the message is transmitted to the intended server (*see*, Auerbach, column 8, lines 10-18). There is absolutely no teaching or suggestion within Auerbach for dividing a message into separate portions and sending each separate portion of the message using a different communications application.

For at least the reasons set forth above, Auerbach fails to disclose not just one, but several of the limitations recited in present claims 1 and 26. As such, Auerbach cannot be relied upon to anticipate all limitations of those claims.

Auerbach does not teach or suggest the presently claimed method step of receiving from the sender a characteristic of the transmission, wherein the characteristic is selected from a group comprising a speed of the transmission, a level of security of the transmission and a size of the message to be sent. Amended independent claim 37 recites in part:

> A method of sending a message by computer-based communication, said method comprising ... receiving from the sender a characteristic of the transmission, wherein the characteristic is selected from a group comprising a speed of the transmission, a level of security of the transmission and a size of the message to be sent ...

Independent claim 18 (a system) recites a similar limitation. Support for the amendments made to claims 18 and 37 may be found in dependent claims 7-10 and 40-42.

Auerbach simply fails to disclose the presently claimed step of receiving a characteristic of the transmission from a sender of the message, where the characteristic is selected from a group comprising a speed of the transmission, a level of security of the transmission and a size of the message to be sent. In fact, the Examiner admits that "Auerbach does not explicitly state wherein the characteristic comprises a speed of the transmission, level of security, and size of the message." For at least these reasons, Auerbach fails to anticipate all limitations of present claims 18 and 37.

Auerbach does not teach or suggest selecting a set of communications applications to be used for transmission of the message, where said selection is based on a characteristic of the transmission (as described above). Independent claim 18 recites in part:

> A system for computer-based communication, said system comprising a computer including a storage medium, wherein the storage medium includes program instructions executable on the computer for ... selecting a set of communications applications to be used for transmission of the message based on a characteristic of the transmission, wherein the characteristic is received from the sender and selected from a group comprising a speed of the transmission, a level of security of the transmission, and a size of the message to be sent ...

Independent claim 26 recites a similar limitation. Support for the amendments to claims 18 and 26 may be found in the claim 7-10 and 40-42, as well as in the present specification, e.g., on page 6, line 27 to page 7, line 11, and page 22, lines 1-8.

As noted above, Auerbach simply fails to disclose the presently claimed steps of selecting a set (e.g., two or more) communications applications to be used for transmission of a message, and receiving a characteristic of transmission from the sender of the message (where the "characteristic" is described as a speed of the transmission, a level of security of the transmission, or a size of the message to be sent). In addition to those steps, Auerbach fails to even suggest that the selection of the set of communications applications might be based on the characteristic of the transmission. Accordingly, Auerbach fails to anticipate yet another limitation of present claims 18 and 26.

For the foregoing reasons, and in light of the current amendments, Applicants assert that independent claims 1, 18, 26, and 37, as well as claims dependent therefrom. Accordingly, Applicants respectfully request that this rejection be removed.

Section 103 Rejection

Claims 8-10, 33, and 40-42 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Auerbach in view of U.S. Patent Application Publication No. 2003/0055844 to Rudd et al. (hereinafter "Rudd"). In addition, claims 12-13, 16, 17, 35, 36, and 39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Auerbach in view of U.S. Patent No. 5,903,754 to Pearson (hereinafter "Pearson"). Claims 12, 35, and 40-42 have been canceled rendering rejection thereto moot. Arguments are provided below for the patentability of independent claims 1, 18, 26, 37 and all claims dependent therefrom.

To establish a case of *prima facie* obviousness of a claimed invention, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. Second, there must be a reasonable expectation of success. As stated in MPEP 2143.01, the fact that references can be hypothetically combined or modified is not sufficient to establish a *prima facie* case of obviousness. *See In re Mills*, 916 F.2d. 680 (Fed. Cir. 1990). Finally, the prior art references must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d. 981 (CCPA 1974); MPEP 2143.03. Specifically, "all words in a claim must be considered when judging the patentability of that claim against the prior art." *In re Wilson* 424 F.2d., 1382 (CCPA 1970). Using these standards, Applicants contend that the cited art fails to teach or suggest all features of the currently pending claims, some distinctive features of which are set forth in more detail below.

Auerbach and Pearson each fail to disclose the presently claimed steps of (i) selecting two or more communications applications to be used for transmission of the message, (ii) dividing the message into separate portions, and (iii) sending each separate portion of the message using a different one of the selected communications applications, such that the entirety of the message is sent. Present independent claims 1 and 26 recite each of the above-mentioned limitations. Independent claim 1 describes the presently claimed "communications applications" as being selected from a group comprising email, instant messaging, message boards, internet chat, IP telephone and video conferencing applications. As set forth in more detail below, these limitations are not taught or suggested by the cited art, nor can the cited art be combined or modified to provide such teaching.

As described in the present specification, there may be many communication applications available to sending a message between computational devices. Unfortunately, availability of equipment, users, and software might determine that one application is more suitable than another (Specification, page 2, lines 18-31). Changing from one communication application to another, however, can be inconvenient and burdensome, thus leading to the desirability to develop a communication system that can select the most appropriate communication application(s) for a particular message (Specification, page 3, lines 18-22).

In response to the conventional art, a communications aggregation technique (CAT) is provided in the present invention to bifurcate or "parse" a message into portions, and to send each of those portions using two or more possibly different communication applications. The CAT program accesses the multiple communication applications in a way that is invisible to the user (Specification – pg. 4, lines 1-16). A user can select the two or more communication applications through a

graphical user interface (GUI), for example, by determining a data structure (Fig. 3), and assigning the data structure to a participant in which one or more messages can be sent in portions using different communication applications (Specification -- pg. 4, line 19 - pg. 7, line 31; pg. 14, lines 21-31; pg. 17, lines 21-31; pg. 18, line 20 - pg. 19, line 7).

Applicants agree with the characterizations made on page 9 of the Office Action: "Auerbach does not explicitly state wherein multiple communications applications are selected, further comprising dividing the message into separate portions appropriate for sending by the respective selected communications applications, prior to sending." Applicants disagree, however, with the assertion made on page 9 that Pearson somehow discloses this limitation.

For example, statements in the Office Action suggest that teaching for the presently claimed step of dividing may be found in Pearson, because "Pearson discloses a system and method for building a protocol stack for use by a communication program to establish a data transfer protocol (Pearson, column 4, lines 45-50)." Pearson defines a "protocol stack" as having multiple protocol layers, wherein each layer is configured for performing a specific protocol function (*see*, Pearson, column 4, lines 32-42).

As such, Applicants are simply confused as to how a method for building a protocol stack, as taught by Pearson, could somehow be considered equivalent to the presently claimed step of "dividing a message into separate portions." First, nowhere in Pearson is there any suggestion that a message can be separated into portions. Second, the protocol layers within the protocol stack of Pearson are in no way equivalent to the message portions as presently claimed.

In addition to the presently claimed step of dividing a message into separate portions, Pearson fails to disclose other limitations that are missing from Auerbach by (i) failing to make any mention of selecting two or more communications applications to be used for transmission of a message, (ii) failing to make any mention of sending each separate portion of the message using a different one of the selected communications applications, and (iii) failing to make any mention that the entirety of a message is sent by compiling the portions sent using the selected communications applications.

Instead, Pearson discloses "[w]hen the communication program prepares data for transmission, the methods of the protocol stack are invoked [such that] ... the data is processed by each layer of the protocol stack in turn as the protocol layers pass the data via the interfaces." (Pearson -- Abstract) Therefore, instead of diving a message (data) into separate portions, where

each portion is sent (processed) using a different communications application (a different layer in the stack), Pearson specifically teaches that the entire message (the data) is sent (processed) by each communications application (each layer in the stack) in turn.

It is noted that the above assumptions (i.e., "data"="message," "sending a message"= "processing data," and "different communications applications"="different protocol layers") were made purely for the sake of argument. A skilled artisan with knowledge of packet transfer and network communication would know that a protocol stack and protocol layers are in no way analogous to communication applications, as defined in the Specification and present claims. Moreover, a skilled artisan when looking to Pearson would in no way gather that an entire message could somehow be hypothetically bifurcated into portions, which may be later sent using a different one of a plurality of selected communication applications, as recited in present claims 1 and 26.

There must be some suggestion in Pearson (or Auerbach) for selecting two or more communications applications for transmitting a message, separating the message into multiple sub-messages (or portions), and sending each of the portions using a different one of the selected communication applications. There is absolutely no teaching, suggestion or motivation within the cited art for the present claim limitations. Accordingly, Applicants respectfully request that this rejection be removed.

Rudd cannot be combined with Auerbach to provide teaching or suggestion for the presently claimed method step of receiving from the sender a characteristic of the transmission, wherein the characteristic is selected from a group comprising a speed of the transmission, a level of security of the transmission and a size of the message to be sent. Amended independent claims 18 and 37 each recite limitations on receiving a characteristic of the transmission, where the characteristic is defined as comprising a speed of the transmission, a level of security of the transmission and a size of the message to be sent. These limitations are recited in dependent claims 7-10 and (cancelled) claims 40-42.

As noted on page 8 of the Office Action, the Examiner admits that teaching for the presently claimed step of receiving a characteristic of transmission (where the characteristic includes a speed of the transmission, a level of security of the transmission and a size of the message to be sent) cannot be found within Auerbach. The Applicant agrees. However, the Applicant disagrees that Rudd can be combined with Auerbach to overcome the deficiencies therein.

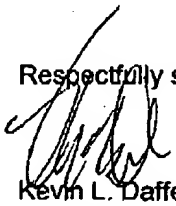
To expedite prosecution, a declaration under 37 C.F.R. § 131 is filed with this response to show that **Rudd is not available as prior art against the current application.** The declaration establishes an invention date prior to September 14, 2001 for the subject matter of the current claims. Because Rudd was filed on September 14, 2001, it is not available as prior art under 35 U.S.C. § 103(a) against these claims. Moreover, the limitations of claims 7-10 and 40-42 have been incorporated into independent claims 18 and 37. Since Auerbach fails to disclose these limitations (as admitted by the Examiner on page 8 of the Office Action), and the secondary reference to Rudd is not available as prior art, Applicants respectfully request that this rejection be removed.

CONCLUSION

This amendment constitutes a complete response to the issues raised in the Office Action mailed June 3, 2005. In view of the remarks herein traversing the rejections, Applicants assert that pending claims 1-10, 13-22, 24-33, and 36-39 are in condition for allowance. If the Examiner has any questions, comments, or suggestions, the undersigned earnestly requests a telephone conference.

Should any fees be required, the Commissioner of hereby authorized to charge such fees to Deposit Account No. 09-0447.

Respectfully submitted,



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